

California Code of Regulations – Fair Housing Summary

California Code of Regulations

Title 2. Administration

Div. 4.1. Department of Fair Employment & Housing

Chapter 5. Fair Employment & Housing Council

Subchapter 7. Discrimination in Housing

<https://www.dir.ca.gov/dlse/ccr.htm>

- **Protected classes**

Whereas the Fair Housing Act includes seven protected classes, the California Fair Employment and Housing Act (FEHA) and the Unruh Civil Rights Act added thirteen more protected classes for a total of twenty under state law. *Section 12005(y)*

Protected classes under federal law:

Race, color, religion, national origin, sex, familial status, and disability

Protected classes under state law:

Race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, age, medical condition, genetic information, citizenship, primary language, and immigration status

In addition to the twenty protected classes, the California Supreme Court has interpreted other “arbitrary characteristics” as protected under the Unruh Civil Rights Act. This includes discriminating against individuals based on personal characteristics that are unrelated to their ability to be good tenants (e.g. individuals with piercings, visible tattoos, green hair, etc.).

- **Source of income**

California recently enacted into law SB 329. This measure prohibits landlords from discriminating against tenants who rely upon housing assistance paid directly to landlords, such as a Section 8 voucher, to help them pay the rent. This measure changes the definition of “source of income” to include housing subsidies adding them to this protected class covered by FEHA.

- **Animals needed due to a disability**

Federal guidance uses the terms “assistance animals” and “services animals” to differentiate between animals covered under the ADA and animals covered under the FHAct and Section 504. Under the new California regulation, the term “assistance animal” has a different meaning from the federal and the definition of “service animal” is broader and essentially includes any animal as long as the animal is trained. *Section 12005(d)*

| | Federal Regulation/Guidance | California Regulation |
|---------------------------|--|--|
| Assistance Animals | Covered under FHAct and Section 504, part of the reasonable accommodation process, do not have to be trained. | Umbrella term use to include all animals needed due to a disability, including “service animals” and “support animals” |
| Service Animals | Covered under the ADA, dogs that are individually trained and with more restrictions trained miniature horses. | Animals trained to perform a task, examples include, “but are not limited to”: <ul style="list-style-type: none"> • Guide dogs as defined under Civil Code 54.1 or other animal trained to guide a blind individual. • Signal dogs as defined under Civil Code 54.1 or other animal trained to alert a deaf or hard-of-hearing individual to sounds. • Service dogs as defined under Civil Code 54.1 or other animal individually trained to the requirements of an individual with a disability. • Miniature horses meeting the requirements of 28 CFR 35.136(i) • Service animals in training as defined under Civil Code sections 54.1(c) and 54.2(b). |
| Support Animals | N/A | Animals that provide emotional, cognitive, or other similar support to an individual with a disability. Does not need to be trained or certified. Also known as comfort or emotional support animals. |

As evident above, the most significant difference is that service animals are not limited to dogs or miniature horses. Under California regulation the definition of service animal includes “other animal trained” and the statement “not limited to”. Furthermore, it is necessary to emphasize that when there is conflict between federal, state, and local requirements, HACLA must apply the requirements that promote the higher level of protection for the tenant.

- **Assistance and services animals that pose a direct threat**

The assessment of whether an animal poses a direct threat under state requirements is similar to the requirements under federal law. It includes the nature, duration, and severity of the risk and the probability that injury will actually occur. However, California adds as relevant evidence during this assessment if the animal is engaging or has a recent history of dangerous acts as described under the Food & Agric. Code section 31601 et. Seq. This section of the code includes a very specific definition of “potentially dangerous dogs” and “vicious dogs”, which considers the number and nature of certain incidents within a 36 month period. *Section 12185(d)(9)(D)*

- **Third party verification**

The new California regulation clarifies that depending on the individual's circumstances, information establishing that the individual has a disability or confirming the disability related need for the accommodation may be provided by "any reliable third party" including medical and non-medical professionals, caretakers, In-Home Supportive Services workers, or others in a caregiving relationship **including relatives**. *Section 12178(g)*

"Any other reliable third party who is in a position to know about the individual's disability...This could include a relative caring for a child with a disability, a relative caring for an elderly family member with dementia, or others in a caregiving relationship with a person with a disability".

This is significantly different from the language on the 2018 Nan McKay training book, which makes several references to third party "professionals" and suggests the following definition on page 4-14:

"A **professional** competent to render the opinion and knowledgeable about the person's situation". **(Emphasis added)**

- **Discrimination against individuals associated with an individual with a disability**

Although this requirement prohibiting discrimination against individuals associated with an individual with a disability is consistent with 24 CFR 100.202, section 12180(b)(5) of the new California fair housing regulation clarifies that this includes an obligation to provide reasonable accommodations due to the association. In other words, housing providers have an obligation to make reasonable accommodations if needed by visitors due to a disability. Not making such accommodations for visitors with disabilities would constitute discrimination against the tenants because of the association.

- **Other reminders for staff**

Although not new requirements, the following needs to be reiterated to staff during training:

- *Assistance completing forms:* Section 12176(c)(6) explains that HACLA must treat a request by an individual with a disability for assistance completing forms or in following procedures, or a request for an alternative method of communication during the reasonable accommodation process, as a request for a reasonable accommodation that must be addressed.
- *Interactive process:* Section 12177 clarifies that whenever a person who receives a request for a reasonable accommodation cannot immediately grant the request, that person considering the request must engage in an interactive process. Furthermore, this section also clarifies that an undue delay may constitute a denial of the reasonable accommodation.
- *Approvals that could open the floodgates:* Section 12179(d) explains that HACLA cannot deny a request based on fear that an approval might become an undue burden if extended to multiple other individuals who might request the same accommodation.